THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 6674 of 2003

Oral order:

Assailing the award dated 08.01.2002, passed by the Labour Court, Anantapur, in I.D. No. 254 of 1999, the petitioner filed the present writ petition.

The petitioner while working with the 2nd respondent-APSRTC as Mechanic, on the ground of unauthorized absence from duty, was chargesheeted by the 2nd respondent, on the following two charges:

(1) For having unauthorisedly absented for your duties from 23.05.1997 to 10.07.1997, 10.07.1997 to 30.07.1997 and 14.08.1997 to 24.09.1997 without any prior sanction of leave, which constitutes misconduct.

(2) For having maintained irregular attendance during the period from 23.05.1997 to 24.09.1997, which constitutes misconduct.

The petitioner states that he being an illiterate did not submit his explanation to the chargesheet. In the absence of any explanation, the 2nd respondent ordered domestic enquiry. The enquiry officer having conducted the enquiry submitted report holding that the charges against the petitioner are proved. Based on the enquiry report, the 2nd respondent, vide orders dated 05.11.1997, removed the petitioner from service. The appeal and review petition filed by the petitioner assailing the order of removal from service, ended in dismissal. Aggrieved thereby, the petitioner raised an industrial dispute in I.D. No. 254 of 1999, and the Labour Court vide award dated 08.01.2002, set aside the order of removal, and imposed a lesser punishment, namely reverting the petitioner to the post of Cleaner for a period of one year, ordered the posting of the petitioner as Mechanic

afresh, if he improved his attendance to 80% during the period of one year, deferred his three annual increments upon reversion, denied monetary and service benefits, including the past service, and further gave liberty to the

2nd respondent to entrust any work as they deem fit during the reversion period. It is this award of the Labour Court, which the petitioner has impugned in this writ petition.

The learned counsel for the petitioner submitted that the Labour Court having set aside the order of removal, passed by the disciplinary authority, as confirmed by the appellate and review authorities, committed an error in imposing punishment, as stated in the award, which in fact, is disproportionate to the gravity of the charges leveled against the petitioner. She submitted that the Labour Court having set aside the order of removal ought to have directed reinstatement of the petitioner into service with all consequential benefits, and more so when the order of removal was passed against the petitioner without issuing show cause notice.

The learned Standing Counsel for the 2nd respondent-APSRTC submitted that the petitioner is a habitual absentee, he failed to submit any explanation to the charges leveled against him, and in those circumstances, departmental enquiry was conducted into the charges, and the Enquiry Officer having conducted the enquiry held that the charges are proved, and based on the enquiry report, the disciplinary authority after issuing notice to the petitioner as to why the punishment of removal from service should not be imposed, passed the order of removal, which in fact was confirmed by the appellate and review authorities. He submitted that the Labour Court even though upheld the findings of the enquiry officer, yet had taken a lenient view, and while setting aside the order of removal, imposed lesser punishment,

as stated in the award, and no interference is called for therewith, and thus prayed for dismissal of the writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the 2nd respondent-APSRTC.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai**[1], the apex Court held as follows:

> Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

Within the parameters, as laid down by the apex Court, in the above judgment, the impugned award of the Labour Court has to be judged.

As can be seen from the award, the petitioner admitted that he unauthorizedly absented for duties, and though to justify his unauthorized absence, the petitioner at one stage stated that he was attacked with jaundice and at another stage stated that he was attacked with typhoid, the fact remains, he has not produced any medical certificate for any of the ailment said to have suffered by him during the period of unauthorized absence. In the absence of any medical certificate produced by the petitioner about the ailment suffered by him, which justified his unauthorized absence, the enquiry officer held that the charges levelled against the petitioner are proved, and more so when the petitioner did not submit any explanation to the charges levelled against him. The Labour Court though concurred with the findings arrived at by the enquiry officer, yet the Labour Court

with a view to give one more opportunity to the petitioner, felt that the order of removal passed by the disciplinary authority, as confirmed by the appellate and review authorities, needed to be set aside, and accordingly in exercise of its discretion under Section 11-A of the Industrial Disputes Act, 1947, passed award setting aside the order of removal, and imposed lesser punishment by reverting the petitioner to the post of Cleaner for a period of one year, and if the petitioner improved his attendance to 80% during the period of one year, ordered for his posting as Mechanic afresh, deferred his three annual increments upon reversion, denied monetary and service benefits, including the past service, and further gave liberty to the 2nd respondent to entrust any work as they deem fit during the reversion period. Admittedly, the Labour Court upheld the findings of the enquiry officer, however, instead of confirming the order of removal, with a view to give one more opportunity to the petitioner, the Labour Court in exercise of its discretion under Section 11-A of the Industrial Disputes Act, 1947 while setting aside the order of removal, imposed lesser punishment, as stated supra, and considering the facts and circumstances of the case, I am of the considered opinion that the Labour Court was justified in imposing lesser punishment, and no interference is warranted with the impugned award, and more so having regard to the judgment of the apex Court in **Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane**[2], wherein it held that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal.

In the above view of the matter, I find no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Dated: 13th April, 2007.
KSR

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[1] AIR 2003 SC 3044=2003AIR SCW3872

[2] (2005) 3 SCC 254